IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.296 OF 2006

Godubai w/o Gundu Dharurkar
since deceased through LRs .. ..Petitioners

Versus

Hanifabee w/o Daood Sawkar .. ..Respondent

Mr.P.R.Arjunwadkar for petitioners
Mr.Ajay A. Joshi for respondent

CORAM : P.V.KAKADE, J.
DATE : 6TH MARCH, 2006.

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. Rule, rule made returnable forthwith by consent.

3. The Petitioner has preferred this petition

against the interim order passed by the lower appellate court dated 18th October, 2005 dismissing the application for exhibiting certain documents, which were sought to be produced in the course of the pending appeal under Order 41 Rule 27 of the Code of Civil Procedure.

. Perusal of the record shows that the application came to be rejected with observation that considering the order passed earlier below Exh.22 and Exh.30, the prayer made in the present application could not be considered and therefore, the application came to be dismissed.

. Now the order below Exh.22 was in fact in favour of the petitioner holding that considering the nature of dispute and reliefs claimed the application was allowed to the extent of production of documents. It was further observed that the documents filed along with list Exh.29 would be considered while deciding the appeal. However, the order passed below Exh.30 was to the effect that the application was rejected. This aspect has created confusion. Perusal of the order below Exh.30 shows that the lower appellate court observed that the application appear to be not bonafide and therefore, prayer made therein could not be considered.

. In this regard the legal position is quite clear. The Apex Court in the case of **State of Rajasthan vs. T.N. Sahani & Ors. reported in (2001) 10 SCC 619** has laid down with regard to the issue pertaining to production of additional evidence to the effect that the application for additional evidence should be decided along with the appeal considering the necessity of the documents, sought to be adduced as additional evidence, for pronouncing the judgment more satisfactorily.

4. In the present case therefore, the interest of justice would be met if the prayer made by the present petitioner is taken into account while deciding the pending appeal finally on merits and therefore, the lower appellate court shall keep the issue open and decide the question whether the documents which are produced on record are admissible and required to be read in evidence at the time of final hearing of the appeal. With this direction the Rule is made absolute and petition stands disposed off with no order as to costs.